

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

JOSE RUBEN GUTIERREZ URBAN,

Petitioner,

-vs-

Case No. 16-C-303

(Consolidated with Case No. 16-C-304)

DALE J. SCHMIDT,
Dodge County Sheriff,

Respondent.

DECISION AND ORDER

Pursuant to the Court's March 28, 2016, Decision and Order, pro se Petitioner, Jose Ruben Gutierrez Urban, who is being detained at the Dodge County Detention Center, paid the \$5.00 filing fee and has filed an amended petition for a writ of habeas corpus pursuant 28 U.S.C. § 2241 challenging March 2, 2015, immigration proceedings against him. He states that he filed an appeal on May 20, 2015, and never received a "reply."

Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts¹ provides that the Court is to make a preliminary

¹ No rules have been specifically promulgated for 28 U.S.C. § 2241 applications. Rule 1 of the Rules Governing Section 2254 Cases in the United States District Courts states that the district court may apply any or all of the § 2254 rules to a habeas corpus petition not specifically covered by those rules. Civil L.R. 9(a)(2) (E.D. Wis.) also states that the Court may apply any of the Rules Governing Section 2254 Cases in the United States District Courts to an application for relief from custody pursuant to § 2241.

review and “[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner.” Gutierrez Urban is in custody pursuant to the detention he now challenges, and he raises arguable constitutional claims. At this stage of the proceedings, the Court cannot conclude that the writ sought by Gutierrez Urban should not issue or that the application is plainly without merit. Accordingly, the Court will require Respondent Dale J. Schmidt to file an answer showing cause why the application should not be granted.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

On or before June 23, 2016, Schmidt **MUST FILE AN ANSWER** showing cause, if any, why this writ should not issue with respect to Gutierrez Urban’s petition for a writ of habeas corpus. The answer should contain the information required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts;

The Clerk of Court is **DIRECTED TO SERVE** the amended petition and a copy of this Decision and Order upon Schmidt; and

Pursuant to Fed. R. Civ. P. 4(i), the Clerk of Court is **DIRECTED** to send a copy of the amended petition and this Decision and Order to the

United States Attorney for this District; and to send a copy of the amended petition and Decision and Order via registered or certified mail to the United States Attorney General in Washington, D.C., United States Immigration and Customs Enforcement, and the United States Department of Homeland Security.

Dated at Milwaukee, Wisconsin, this 21st day of April, 2016.

BY THE COURT:


HON. RUDOLPH T. RANDA
U.S. District Judge